of January, 1912, there appeared a biographical sketch of Wigmore, setting forth with insight and enthusiasm, his meaning and influence in the history of the development of legal thought. Since then his productivity has not lessened and his constructive talent has created new fields for scholarly and practical work.

He has supplemented his monumental work on evidence, which alone would insure his immortality among lawyers, with "Principles of Judicial Proof," elevating the art to the heights of science, and he has written dozens of articles and notes on a variety of topics, his originality especially displaying itself in such articles as "The Terminology of Legal Science," 28 Harv. L. R. 1; "The International Assimilation of Law," 10 Ill. L. R. 385; "Justice Holmes and the Law of Torts," 29 Harv. L. R. 601, and three brilliant lectures, delivered at the University of Virginia Law School (published in 4 Va. L. R.). Finally he tendered his genius for organization to the Government, which he has been serving in various capacities since the outbreak of the war, entitling him among other things to be called Colonel. He will, however, to those who really know him, never be Colonel Wigmore. Such titles may well be reserved for lesser men. Neither shoulder straps nor military title have added anything to the distinction which his native genius long since conferred upon him. We shall think of him as Professor Wigmore, the great scholar and teacher, author and editor, or simply as Wigmore, a fountain of energy and inspiration, or, to use and combine two Hebrew metaphors, as "a limed pit that does not lose a drop" and "an ever-increasing spring." Wigmore has been able to acquire and store up for use whenever needed a most extraordinary volume of knowledge which has not made of him, as of so many other mere scholars, an "ass carrying books," but has furnished material for his ever-active and ever-expanding intellect to work upon for the purpose of striking out into new fields of activity and thought.

We, of Pennsylvania, tender our very sincere congratulations to Northwestern University Law School and our thanks to Professor Wigmore for the many ripe fruits of his scholarship and the inspiration of his example.

David Werner Amram.

TAXATION—INHERITANCE TAXES—DEDUCTION OF FEDERAL TAX BEFORE ASSESSING STATE TAX—In the appraisal of an estate for the purposes of determining the amount of a state inheritance tax is it proper to deduct the Federal estate tax imposed by the Revenue Act of September 18, 1916?[1] This is an old question raised in a new form. The power of Congress to levy an estate

[1] 39 U. S. Stat. at Large 756, tit. II, Sec. 201; amended March 3, 1917; 39 U. S. Stat. at Large 1002.

tax and the constitutional limits of such legislation may be considered as settled by *Knowlton* v. *Moore*,[2] construing the legacy tax legislation of 1898. Mr. Justice White, in an elaborate opinion, going into the history of death duties in general, points out that although different methods of assessing such duties prevail, the essential feature of such a tax is that "death is the generating source from which the particular taxing power takes its being, and that it is the power to transmit, or the transmission from the dead to the living, on which such taxes are more immediately rested."

Four days after the decision in *Knowlton* v. *Moore*, the Supreme Judicial Court of Massachusetts held that a legacy tax paid to the United States under the Act of June 13, 1898,[3] was to be deducted before paying the state succession tax under the Massachusetts Act of 1891.[4] The question, said Chief Justice Holmes, was not one of precedence between Commonwealth and United States, but one of justice. "State inheritance tax laws are apt to aim at seizing all they can get without regard to consistency of principle, but when it is possible to interpret them to mean what is just, we must do so." The word "property" as used in the state act was held to mean "the property which the legatee would actually get were it not for the state tax imposed in the sentence in which the words occur." Two years later a contrary decision was rendered by the New York Court of Appeals in *Matter of Gihon*,[5] on the theory that the Federal tax was of exactly the same nature as the state tax, a tax on the legatee for the privilege of succeeding to the property—"the full amount of the legacy is in law paid to the legatee and the deduction made from it and paid to the state or Federal government is paid on account of the legatee from the legacy which he receives."

The Federal Revenue Acts of 1898 and 1916 differ considerably. In the former act the tax was imposed on the particular legacies or distributive shares, not on the estate as a whole. In the latter act the tax is laid on the value of the net estate after allowing certain exemptions provided for in the act. "It being the purpose and intent of this title that so far as is practicable and unless otherwise directed by the will of the decedent the tax shall be paid out of the estate before distribution."[6] A general view of the terms of the law lends force to the view expressed by the Vice Ordinary in the recent case of *Roebling's Estate*,[7] decided in

[2] 178 U. S. 41 (1900).

[3] 20 U. S. Stat. at Large 448, Secs. 29, 30.

[4] Hooper v. Shaw, 176 Mass. 190 (1900).

[5] 169 N. Y. 443 (1902). *Accord:* Matter of Irish, 28 N. Y. Misc. 647 (1899); Matter of Curtis, 31 N. Y. Misc. 83 (1900).

[6] Section 208, of Act of 1916, *supra*.

[7] *In re* Roebling's Estate, 104 Atlantic Rep. 295 (N. J. 1918).

the Prerogative Court of New Jersey, that the Federal tax "is imposed upon the estate transferred by death and not upon the succession resulting from death." As the Federal tax was imposed on the estate and the New Jersey inheritance tax on the succession, it was held that the Federal tax should be deducted in order to determine the amount to which the beneficiaries would succeed and upon the sum so ascertained the state tax should be assessed.

In accord with the foregoing view there are recent decisions in Minnesota [8] and Connecticut.[9] The Federal tax, says the Supreme Court of Connecticut, "is an obligation against the estate and payable like any expense which falls under the head of administration expenses. The tax is no part of the estate at the time of distribution; it has passed from the estate, and the share of the beneficiaries is diminished by just so much." Lower court decisions in Pennsylvania are also in accord,[10] following the principle of *Van Beil's Estate,*[11] where it was held that sums paid as New Jersey transfer tax on stocks and bonds should be deducted in appraising the clear value of the estate subject to collateral inheritance tax in Pennsylvania. Upon this point opinions in other jurisdictions differ.[12]

Recent decisions in New York adhere to the position taken in *Matter of Gihon,*[13] and contrary to the views above expressed refuse to treat the Federal estate tax as an expense of administration to be deducted in determining the amount of the state inheritance tax.[14] The state tax, it is urged, is imposed on the value of the decedent's property at the time of his death and the deduction of the Federal tax would diminish the amount which the state has appropriated as a condition to the transfer from decedent to beneficiary. "The constitutionality of a Federal act entitled to such a construction and effect," it is said, "might well be doubted." One may ask why? Indeed, the Minnesota case, referred to above,[15] holds, "that the claim that the Federal tax imposes a tax upon the estate and not upon the transfer to the beneficiaries and for that reason is inhibited by the Federal constitution, is not well founded."

[8] State v. Probate Court of Hennepin Co., 166 N. E. 125 (Minn. 1918).

[9] Corbin v. Townshend, 103 Atlantic Rep. 647 (Conn. 1918).

[10] Keister's Estate, 27 Pa. Dist. Rep. 147 (1917); Bell's Estate, 27 Pa. Dist. Rep. 152 (1917); Knight's Estate, 27 Pa. Dist. Rep. 173 (1918).

[11] 257 Pa. 155 (1917); affirming 32 Mont. Co. L. R. 135, and Otto's Estate, 25 Pa. Dist. Pa. 644 (1916).

[12] Compare, in accord, on principle, Kingsbury v. Bazeley, 75 N. H. 13 (1908); Bullard v. Redwood Library, 37 R. I. 107 (1914); with, *contra,* People v. Palmer's Estate, 25 Colo. App. 450 (1914); Matter of Penfold, 216 N. Y. 171 (1915).

[13] *Supra,* note 5.

[14] Matter of Bierstadt, 178 N. Y. App. Div. 836 (1917); Matter of Sherman, 179 N. Y. App. Div. 497 (1917); affirmed without opinion, 222 N. Y. 540

[15] *Supra,* note 8.

The New York doctrine accords with a harsh and grasping policy in the administration of tax laws, but is within the state's power. As is shown in *Blackstone* v. *Miller*,[16] "The fact that two states, dealing each with its own law of succession, both of which the plaintiff in error has to invoke for her rights, have taxed the right which they respectively confer, gives no cause for complaint on constitutional grounds."

W. H. Loyd.

[16] 188 U. S. 189 (1903).